IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 245 of 2007
With
CRIMINAL MISC.APPLICATION No. 8842 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPBHAI MANSUKHBHAI CHAUDHARY - Applicant(s)
Versus
THE STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :
MR BHARAT T RAO for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE UNSERVED for Respondent(s) : 2,
NOTICE SERVED for Respondent(s) : 3 - 6.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/09/2007

ORAL JUDGMENT

1. Special Criminal Application No.245 of 2007 has been filed by the petitioner – original complainant on 21st November, 2006 for an appropriate writ, direction and/or order for

transferring Inquiry Case No. 28 of 2005 pending in the Court of learned Chief Judicial Magistrate, Prantij, which has been sent for investigating under section 156(3) of the Cr.P.C. to Prantij Police Station for investigation where it has been numbered as M Case No.13 of 2005 to C.I.D. (Crime) (Economic Wing), Gandhinagar by further directing the I.O. of C.I.D. (Crime) (Economic Wing), Gandhinagar to submit investigation report and file charge-sheet against the respondent Nos.2 to 5.

Criminal Misc. Application No.8842 of 2005 has been filed by the applicants – original accused Nos.1 to 4 to quash and set aside the aforesaid complaint being M Case No.13 of 2005 registered with Prantij Police Station and Inquiry Case No.28 of 2005 pending in the Court of learned JMFC, Prantij.

2. At the outset, it is required to be noted that during the pendency of the Criminal Misc. Application No.8842 of 2005, charge-sheet is

already filed against the accused persons i.e. applicants of Criminal Misc. Application No. 8842 of 2005 in the month of November – 2006 for the offences under sections 406, 420 and 114 of the I.P.C. and therefore, Criminal Misc. Application No.8842 of 2005 is not entertained and the applicants – original accused are relegated to submit an appropriate application for discharge before the appropriate concerned Court under section 227 of the Cr.P.C. with an observation that as and when such an application is made, the same shall be considered by the learned trial court in accordance with law and on its own merits.

3. So far as Special Criminal Application No. 245 of 2007 is concerned, it is required to be noted that before the present application is filed, charge-sheet has already been filed against the accused persons under sections 406, 420 and 114 of the I.P.C. It is the case on behalf of the petitioner – original complainant that all the accused persons have committed offences under

sections 464, 468, 471, 120(b) and 114 of the I.P.C. also and therefore, they ought to have been charge sheeted for the said offences but the I.O. has not conducted the investigation for the aforesaid offences and/or though a case is made out against the accused persons under sections 464, 468, 471 and 120(b) of the I.P.C., they are not charge sheeted for the said offences and therefore, the investigation should be transferred to C.I.D. (Crime) (Economic Wing), Gandhinagar, State of Gujarat.

4. At this stage, Shri Asim Pandya, learned advocte appearing for the original accused persons has relied upon the decision of the Hon'ble Supreme Court in case of ***Anurag Rastogi & Others V/s. State of U.P. & Another*** reported in ***(2007) 2 SCC (Cri) 410*** and has submitted that as held by the Hon'ble Supreme Court, learned Magistrate is not bound to take cognizance of offences indicated in the police report and proper stage for considering the offences for which the accused should be tried is the stage of framing of the

charges and the petitioner can raise his objections before the learned Magistrate and/or trial Court and will submit that the accused persons should be charge sheeted for the offences under sections 464, 468, 471 and 120(b) of the I.P.C. also and at that stge, the learned Magistrate can consider the said submissions at the time of framing of the charge and if the learned Magistrate is satisfied that a case is made out against the accused persons for the offences under section 464, 468, 471 and 120(b) of the I.P.C., a charge can also be framed against the accused persons for the said offences and therefore, it is requested not to entertain present petition and relegate the petitioner to submit an appropriate application before the learned Magistrate.

5. Now, considering the fact that the investigation is already concluded and charge-sheet is already filed against the accused persons in the month of November – 2006 and the accused persons are charge sheeted for the offences under sections

406, 420 and 114 of the I.P.C. and charge is yet to be framed by the learned trial Court, considering the decision of the Hon'ble Supreme Court in case of ***Anurag Rastogi & Others*** (supra), it appears to the Court that the learned Magistrate is not bound to take cognizance of the offences indicated in the police report and proper stage for considering the offences for which the accused should be tried is the stage of framing of the charge and the applicant – original complainant can still submit an application before the concerned learned Magistrate to the effect that on the basis of the evidences collected by the I.O., cognizance ought to have been taken for the offences punishable under sections 464, 468, 471 and 120(b) of the I.P.C. and if the learned Magistrate is of the view after the evidence was adduced that commission of the offences under sections 464, 468, 471 and 120(b) of the I.P.C. is made out, in that case, prayer of the informant can be considered. Under the circumstances, petitioner to make an appropriate

application before the learned Magistrate submitting his objections and the learned Magistrate / trial Court is directed to consider the same at the time of framing of the charge. Under the circumstances, as and when such an application is submitted by the applicant – original complainant, the same shall be considered by the learned trial Court at the time of framing of the charge and it shall be considered by the learned Magistrate for which offences accused should be tried. It also goes without saying that even as and when the application is submitted by the original accused persons to discharge them, it will be open for the petitioner – original complainant to object the same.

6. With these, both these applications are disposed of.

(M.R.Shah, J.)

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